

**COMMERCE AND ECONOMIC GROWTH COMMISSION
URBAN ENTERPRISE ZONE AUTHORITY**

Urban Enterprise Zone Authority Policies

Proposed Readoption With Amendments: N.J.A.C. 12A:121

Authorized By: Urban Enterprise Zone Authority, Gregory W. Adkins, Executive Director and Chair Designate

Authority: N.J.S.A. 52:27H-60 et seq., specifically 52:27H-65.

Calendar Reference: See summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003-486

Submit comments by February 13, 2004 to:

Gregory W. Adkins, Executive Director

New Jersey Urban Enterprise Program

New Jersey Commerce and Economic Growth Commission

20 West State Street

PO Box 820

Trenton, New Jersey 08625-0820

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 12A:121, Urban Enterprise Zone Authority Policies, expires on May 8, 2004. The Authority proposes to readopt, with amendments, the rules governing the Urban Enterprise Zone Program. The Department has reviewed these rules and has found them to be reasonable, necessary

and proper for the purposes for which they were originally promulgated. Further revisions to this chapter are in preparation and will be submitted when the results of the Fiscal Impact Study are available for analysis.

These rules are promulgated by the New Jersey Urban Enterprise Zone Authority (UEZA) which is responsible for implementing the New Jersey Enterprise Zone Act, N.J.S.A. 52:27H-60 et seq., (P.L. 1983, c.303), and associated programs. The purpose of these rules is to encourage economic development in certain areas of specifically designated municipalities in the State.

Subchapter 1 sets forth the standards of eligibility for zone boundary revisions (N.J.A.C. 12A:121-1.3); requires analysis of how the proposed boundary revision will relieve: economic distress, high unemployment, low investment of capital, blighted conditions and obsolete or abandoned industrial or commercial structures and deteriorating tax base (see N.J.A.C. 12A:121- 1.4); establishes the time for zone boundary revisions (N.J.A.C. 12A:121- 1.5); and provides the standards used to evaluate an application for boundary revision (N.J.A.C. 12A:121-1.6).

The rules in subchapter 2 extend the 50 percent sales tax exemption to those urban enterprise zone municipalities that did not have them at the time of the original adoption (N.J.A.C. 12A:121-2.1); set forth the application requirements for the exemption (N.J.A.C. 12A:121-2.2); establish the time for application (N.J.A.C. 12A:121-2.3); and provide for the application evaluation (N.J.A.C. 12A:121-2.4).

The proposed amendments are technical in nature in that they replace references to the New Jersey Department of Commerce to the New Jersey Commerce and Economic Growth Commission and update changes to the title of Administrator of the Urban Enterprise program to Executive Director. The Department of Commerce and Economic Development, abolished by statute in 1998, was replaced by the Commerce and Economic Growth Commission. Slight changes to the designation of authority from "Department" to "Commission," and "Commissioner" to "Secretary" are permitted because in 1998, the Legislature passed P.L. 1998, c. 44, Assembly No. 2159, which abolished the Department of Commerce and Economic Development and created the New Jersey Commerce and Economic Growth Commission. (See N.J.S.A. 52:27C-61 et seq.) The proposed technical amendments in N.J.A.C. 12A:121-1.1(c);1.2 and 2.1(c), delete the words "Department of Commerce and Economic Development" and replace them with "Commerce and Economic Growth Commission" to accurately reflect the statutory change from the Department of Commerce and Economic Development to the Commerce and Economic Growth Commission. The title of "Administrator" was redefined as the "Executive Director" in N.J.A.C. 12A:121- 1.2 to reflect the current title of the Administrator of the program. Changes in the postal address of the Urban Enterprise Zone Program for the post office box and the zip code were implemented in N.J.A.C. 12A:121-2.1(c). The Commerce Commission is allowing a 60-day comment period for this notice of proposal, therefore, the proposal falls under the to N.J.A.C. 1:30-3.3 (a)5 exception to the requirement for rulemaking calendar notice.

Social Impact

The social impact of this program has been, and will continue to be, positive because it has created additional employment opportunities for residents of the municipalities in which a zone is located and for the residents of the zones. Additionally, zone municipalities are better able to attract business to the zone.

Economic Impact

The economic impact of this program has been, and will continue to be, positive by providing enhanced economic development opportunities for economically-distressed municipalities. These opportunities will continue to result in sounder economic development within these municipalities by broadening and strengthening the tax base of these municipalities. The State incurs, and will continue to incur, certain costs to administer the program. Certain amounts of State sales tax generated from sales within the zone are set aside to provide certain service improvements within the zones.

Federal Standards Statement

The rules proposed for readoption with amendments are not subject to Federal standards or requirements, and a Federal standards analysis is not required for this rulemaking.

Jobs Impact

The Authority expects that jobs will be generated as a consequence of the rules proposed for readoption with amendments. Based on the most recent fiscal impact study, the Authority expects the creation of jobs Statewide.

Agriculture Industry Impact

The rules proposed for readoption with amendments concern an urban development program with no impact on the agriculture industry.

Regulatory Flexibility Statement

There may be a positive economic impact on those small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., who reside within the Urban

Enterprise Zones governed by these rules. However, the rules pertain to the municipalities seeking participation in the Urban Enterprise Zone program and as such do not impose any reporting, recordkeeping or compliance requirements directly on small businesses. Therefore, a regulatory flexibility analysis is not required.

Smart Growth Impact

The rules proposed for readoption with amendments will have a positive impact on the goals and objectives of smart growth and the implementation of the State Development and Redevelopment Plan. The rules continue the provision of incentives for economic development in urban areas that are also smart growth priority areas.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12A:121.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. URBAN ENTERPRISE ZONE BOUNDARY AMENDMENTS

12A:121-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Urban Enterprise Zone Authority

(UEZA) to implement P.L. 1983, ch. 303, the New Jersey Urban Enterprise Zones Act, and to specifically implement the methodology of amending zone boundaries within a municipality.

(b) The Act provides for the establishment of the UEZA which is to designate certain areas of the State as Urban Enterprise Zones (UEZ). The Act also provides that the UEZA exercise continuing review and supervision of the implementation of zone development plans.

(c) Applications and questions concerning a UEZ should be directed to:

Urban Enterprise Zone Program

[New Jersey Department of Commerce and Economic Development] New Jersey Commerce and Economic Growth Commission

20 West State Street, P.O. Box 820

Trenton, New Jersey 08625-[0829] 0820

12A:121-1.2 Definitions

The words and terms used in this chapter shall have the following meanings, unless the

context clearly indicates otherwise:

"Act" means the New Jersey Urban Enterprise Zones Act, P.L. 1983, ch. 303, N.J.S.A. 52:27H-60 et seq.

"Administrator" means the [Administrator] Executive Director of the Urban Enterprise Zone Program in the [Department of Commerce and Economic Development] New Jersey Commerce and Economic Growth Commission.

"Authority" or "UEZA" means the New Jersey Urban Enterprise Zone Authority.

"Enterprise zone" or "zone" means an urban enterprise zone designated by the New Jersey UEZA pursuant to this Act.

"Qualified business" means any entity authorized to do business in the State of New Jersey which, at the time of designation as an enterprise zone, is engaged in the active conduct of a trade or business in that zone or an entity which, after that designation but during the designation period, becomes newly engaged in the active conduct of a trade or business in that zone and for which at least 25 percent of its full-time employees, newly hired during the two years after issuance of the business' certificate of occupancy to work at a business location in the zone, meet one or more of the following criteria:

1. Resident within the zone, within another zone or within the municipality within which

the zone or any other zone is located; or

2. Unemployed for at least a year prior to being hired and residing in New Jersey, or recipients of New Jersey public assistance programs for at least one year prior to being hired; or

3. Determined to be economically disadvantaged pursuant to the Jobs Training Partnership Act, Pub.L. 97-300 (29 U.S.C. § § 1501 et seq.)

"Qualifying municipality" means any municipality in which there was, in the last full calendar year immediately preceding the year in which application for enterprise zone designation is submitted pursuant to section 14 of the Act, an annual average of at least 2,000 unemployed persons, and in which average annual unemployment rate for that year exceeded the State average annual unemployment rate; except that a municipality which qualifies for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) shall qualify if its municipal average unemployment rate for that year exceeded the State average annual unemployment rate. The annual average of unemployed persons and the average annual unemployment rates shall be estimated for the relevant calendar year by the Office of Labor Statistics, Division of Planning and Research of the State Department of Labor.

"Zone development corporation" means a nonprofit corporation or association created by the governing body of a qualifying municipality to formulate and propose a

preliminary zone development plan pursuant to section 9 of the Act.

"Zone development plan" means a plan adopted by the governing body of a qualifying municipality for the development of an enterprise zone therein, and for the direction and coordination of activities of the municipality, zone businesses and community organizations within the enterprise zone toward the economic betterment of the residents of the zone and the municipality.

"Zone neighborhood association" means a corporation or association of persons who either are residents of, or have their principal place of employment in, a municipality in which an enterprise zone has been designated pursuant to the Act; which is organized under the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and which has for its principal purpose the encouragement and support of community activities within, or on behalf of, the zone so as to:

1. Stimulate economic activity;
2. Increase or preserve residential amenities; or
3. Otherwise encourage community cooperation in achieving the goals of the zone development plan.

12A:121-1.3 Standards of eligibility for zone boundary revisions

(a) A qualified municipality shall be eligible to apply for a revision of the urban enterprise zone within that municipality when:

1. The proposed boundary revision will not enlarge the geographic area of the existing zone by more than 10 percent;

2. The expansion and revision of the zone boundaries will not, as based upon the original zone application, significantly alter the percentage within the zone of:

i. Unemployment;

ii. Persons below the poverty level; or

iii. Persons receiving public assistance.

12A:121-1.4 Application for zone boundary revisions

(a) Each application for a zone boundary revision shall include an analysis of how the proposed zone revision will relieve:

1. Economic distress;

2. High unemployment;

3. Low investment of capital;

4. Blighted conditions;

5. Obsolete or abandoned industrial or commercial structures; and

6. Deteriorating tax base.

(b) Each application for a zone boundary revision shall include a rationale for the boundary change and why the area to be added was not included in prior boundary revision requests or the original application.

(c) Each application for a zone boundary revision shall be accompanied by a resolution from the municipal governing body supporting the request.

12A:121-1.5 Time for zone boundary revisions

(a) A municipality in which a zone is located may apply for a boundary revision five years or more after the original designation date.

(b) No subsequent application for a zone boundary revision may be made for at least five years after the date the UEZA approves a prior zone boundary revision.

12A:121-1.6 Evaluation of a zone boundary revision application

(a) The Administrator shall evaluate each zone boundary revision application considering the following factors:

1. The likelihood that the boundary revision will alleviate general problems of economic distress within the existing zone and the proposed area to be covered under the boundary revision;

2. The likelihood that the boundary revision will help alleviate problems of high unemployment in the municipality and the zone area;

3. The likelihood that the boundary revision will result in investment of new capital in

the zone and the proposed area to be covered under the boundary revision;

4. Whether the boundary revision will help alleviate blighted conditions in the zone and the proposed area to be covered under the boundary revision;

5. Whether the boundary revision will aid in modernizing or reoccupation of industrial or commercial structures within the zone and the proposed area to be covered under the boundary revision; and

6. The likelihood that the boundary revision will strengthen and broaden the municipal tax base.

(b) After the Administrator's evaluation is complete, he or she shall forward the application for the UEZA's review, modification, denial, and/or approval.

(c) Notwithstanding the provisions of this subchapter, the Authority may, in its discretion, consider a request for zone boundary revisions if it deems the special conditions of the application to be of exceptional merit.

SUBCHAPTER 2. DISCRETIONARY EXTENTION OF 50 PERCENT SALES TAX EXEMPTION TO URBAN ENTERPRISE ZONE MUNICIPALITIES

12A:121-2.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Urban Enterprise Zone Authority (UEZA) to implement P.L. 1983, ch. 303, as amended by P.L. 1988, ch. 93, the New Jersey Urban Enterprise Zones Act, and to specifically implement provisions pertaining to the discretionary power of the UEZA to extend the 50 percent sales tax exemption to those urban enterprise zone municipalities which do not currently have such a benefit.

(b) The Act provides for the establishment of the UEZA, which is to designate certain areas of the State as Urban Enterprise Zones (UEZs). The Act also provides that the UEZA exercise continuing review and supervision of the implementation of zone development plans.

(c) Applications and questions concerning a UEZ should be directed to:

Urban Enterprise Zone Program

[New Jersey Department of Commerce and Economic Development] New Jersey
Commerce and Economic Growth Commission

20 West State Street, [CN 829] P.O. Box 820

12A:121-2.2 Zone municipality application for 50 percent sales tax exemption

(a) Each application for the 50 percent sales tax exemption shall be accompanied by a certified resolution of the governing body of the municipality supporting the application.

(b) Each application for the 50 percent sales tax exemption shall be accompanied by a benefit statement prepared by the municipality or its agent. The benefit statement shall include, but is not limited to:

1. The number of permanent fulltime jobs to be created in the municipality and the existing UEZ if the exemption were to be granted;
2. The increase in the valuation of real property in the municipality and the existing UEZ if the exemption were granted;
3. The extent to which the granting of the exemption would contribute to the economic and social revitalization of the municipality and the existing UEZ;
4. Any other information the UEZA deems relevant or necessary for the purpose of evaluation of the municipal application.

(c) Each application for the 50 percent sales tax exemption shall be accompanied by an analysis of the impact on the other UEZs in the State of New Jersey if the exemption were granted. The impact analysis shall include, but is not limited to:

1. An analysis of whether the exemption would have an effect on the valuation of UEZ municipalities;

2. An analysis of whether the exemption would have an effect on the social and economic revitalization of other UEZ municipalities;

3. An analysis of whether the exemption would have an effect on the growth of businesses in other UEZ municipalities;

4. An analysis of the increase or decrease of State Tax and other revenues to be created if the exemption were to be granted.

12A:121-2.3 Time for municipal application for 50 percent sales tax exemption

An existing New Jersey Urban Enterprise Zone municipality may apply to the UEZA at any time for the 50 percent sales tax exemption.

12A:121-2.4 Evaluation of 50 percent sales tax exemption municipal application

(a) The Administrator shall evaluate each municipal application for the 50 percent sales tax exemption, considering the following factors:

1. The probability that the granting of the exemption will create permanent fulltime new jobs in the applying municipality;
2. The probability that the granting of the exemption will increase the valuation of real property in the applying municipality;
3. The probability that the granting of the exemption will contribute to the economic and social revitalization of the applying municipality;
4. The probability that the granting of the exemption will significantly increase the economic activity of the applying municipality;
5. The probability that the granting of the exemption will increase the capital expenditures to be undertaken by qualified zone businesses in the applying municipality;
6. The social and economic impact that the granting of the exemption will have on

other State of New Jersey Urban Enterprise Zone municipalities; and

7. The extent to which the granting of the exemption will further the purposes and intent of the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq.

(b) After the evaluation is completed, the Administrator shall forward to the UEZA the following items for their review:

1. The evaluation of the application completed by the Administrator;
2. The application and accompanying documents submitted by the municipality; and
3. Any written comments received from interested parties concerning the application of the municipality for the exemption.

(c) The UEZA shall, within 120 days from the completion of the evaluation by the Administrator, review the application of a municipality for the 50 percent sales tax exemption and advise the municipality that:

1. The application has been approved;
2. The application has been denied; or

3. The application remains under consideration pending receipt of additional specified information.